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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

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Leary W. Cox,

Plaintiff,

versus

John S. Pistole,

Defendant.

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Civil Action H-11-2618

### Opinion on Dismissal

1. *Introduction.*

A former employee of the Transportation Security Administration sued for violations of his constitutional rights. The government says that he has failed to state articulate a claim recognized by law in his description of the cause of action. The government will prevail.

2. *Background.*

Leary Cox was hired in 2002 as an airport screener for the Transportation Security Administration. Since 2006, Cox has been repeatedly told that he was taking too much unscheduled leave. In 2009, he had seven instances of unscheduled and undocumented absences from work. In 2010, he missed two days of work and did not explain his absences with substantive medical documents. He was fired on July 2, 2010, for not following instructions about sick leave and for unreliable attendance.

3. *Privacy and Free Speech.*

Cox says that the government violated his right to privacy by requiring him to reveal constitutionally protected medical information to explain his absences. His privacy does not extend to immunizing him from his duty to explain, with supporting documents. Work requires employees who are at work dependably. Employees may use their sick leave, so long as they later give a reasonable explanation of the medical need. This enables the government to staff positions while

giving recognizing authentic sickness. Cox was free not to explain himself, and the government was free to meet its legitimate needs by firing him. He cannot use his medical needs offensively to get time off and deny his employer the full information defensively.

Cox says that his freedom of speech was violated because he was fired for talking about his opposition to submitting medical records to explain his absences. Protected speech includes talking at work about how one feels about a general employment policy; it does not include saying you are not going to obey a lawful order. Also, Cox cannot show that his spoken opinions were the reason for his firing.

4. *Due Process.*

Cox says that he was not afforded the process he was due because the government did not tell him about the Family and Medical Leave Act and it fired him without a meaningful hearing.


Cox has not shown that the government did not post notice of the Family and Medical Leave Act or that he was not told of it when he was hired. Also, this is a statutory claim that does not raise a due process problem.

To the extent that he complains that he was fired without safeguards, his claim fails. Cox was a civil servant employed by a government agency. He was given full procedural and civil service protections – pre-firing notice of the decision to fire him and an opportunity to appeal the firing.

5. *Conclusion.*

Leary W. Cox has not stated a claim on which he may recover. He had no constitutional right to privacy for medical documentation of his unexcused absences from work. His free speech was not exercised by him nor implicated in his firing. He did not show up for work. Leary W. Cox will take nothing from John S. Pistole.

Signed on November 25, 2011, at Houston, Texas.

A handwritten signature in black ink, appearing to read 'Lynn N. Hughes', is written over a horizontal line.

Lynn N. Hughes  
United States District Judge